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October 20, 2005

Eric S. Brown
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COURIER

Alva DeJarnett-Miller, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 5620
The Richard Burr Committee and Timothy W. Gupton, Treasurer

Dear Ms. DeJarnett-Miller:

This responds to the September 13, 2005 Federal Election Commission ("the Commission") letter notifying our clients, The Richard Burr Committee and Timothy W. Gupton, as treasurer (the "Committee"), of a complaint filed by Thomas J. Strini in the above-reference matter. For the reasons set forth below, the Commission should find that there is no reason to believe that the Committee violated any provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), or Commission regulations and should promptly dismiss the complaint. This response is filed today pursuant to the extensions of time granted by your Office by letter dated September 27, 2005 and by telephone on October 14, 2005.

For the reasons set forth in the Committee's response in MUR 5577, incorporated herein by reference, this matter is without merit and should be dismissed. See attached MUR 5577 involves similarly unfounded allegations, with no basis in law or fact, that simply because a mailer references a federal candidate, that candidate's principal campaign committee purportedly receives or accepts an impermissible contribution. Yet, as the Committee's response in MUR 5577 shows, this allegation fails to meet the minimum standards of a valid complaint under the Act, reflects a deficient understanding of fundamental campaign finance law and is contradicted by the sworn testimony of the Committee's campaign manager.

The complaint must be dismissed for the additional reason that Commission regulations provide that the General Counsel "shall within five (5) days after receipt notify each respondent that the complaint has been filed, advise them of Commission compliance procedures, and enclose a copy of the complaint" 11 C.F.R. § 111.5(a), 2 U.S.C. § 437g(a)(1). The complaint was filed on November 29, 2004, yet the Committee was not notified of the complaint until the Commission's September 13, 2005 letter, a delay of 288 days. Proceeding with an investigation is barred for failing to comply with the five day requirement, and the filing of this response does not waive any

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such defenses or rights in the current enforcement matter or during any other stage of the proceedings.

In sum, because the complainant's allegations describe no possible violation of the Act as to the Committee, the Committee rests on its previous response to MUR 5577, a similarly-styled nuisance-complaint filed by the same complainant. Therefore, the Commission should dismiss this matter immediately and find no reason to believe that the Committee violated any provision of the Act.

Thank you for your consideration and please do not hesitate to contact us with any questions.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Eric S. Brown'.

Eric S Brown

Attachment

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BEFORE THE FEDERAL ELECTION COMMISSION

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The Richard Burr Committee)
)
Timothy W. Gupton, Treasurer)
P.O. Box 5928)
Winston-Salem, NC 27113)

MUR 5577

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INITIAL RESPONSE OF RESPONDENT BURR COMMITTEE

On November 1, 2004, The Richard Burr Committee and its treasurer, Timothy W. Gupton (collectively, the "Committee") received notice from the Federal Election Commission ("Commission") of a complaint filed by one Thomas J. Strini of Mint Hill, North Carolina ("complaint"). Because the complaint fails to state a claim against the Committee, the Commission should find no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended (the "Act") has occurred, and should take no action against the Committee.

Though any person may file a complaint with the Commission, *see* 2 U.S.C. § 437g(a)(1); 11 CFR 111.4(a), complaints should "contain a clear and concise recitation of the facts which describe a violation of a statute or regulation." 11 CFR 111.4(d)(4). The complaint addresses a "flyer [Mr. Strini] received ... which appears ... to advocate the candidacy of Richard Burr." *See* Complaint. The complaint states that "the ad [in question] is paid for by the National Association of Realtors" and that "any reasonable individual *would consider the cost of producing and distributing this flyer to be a political contribution* to Mr. Burr." *Id.* (Emphasis added). This is the totality of the so-called violation(s)

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alleged in the complaint.¹ The complaint presumes that the fact of publication, by itself, is sufficient to create either an impermissible or excessive contribution (or both) by the Realtors to the Burr Committee. But this is not true under Federal law. The Act recognizes the right of outside organizations to spend money for communications without automatically accruing regulable and reportable benefits to candidate committees. *See generally* 2 U.S.C. § 431(17) (independent expenditures); 2 U.S.C. §§ 434(f)(3); 441b(a) (disbursements for applicable electioneering communications); 2 U.S.C. §§ 431(9)(B)(i) (editorials). Contrary to the standard of 11 CFR 111.4(d), the complaint does not recite facts which describe a violation of the Act. As such, the Commission should find no reason to believe a violation exists and take no further action against the Committee.

An independent review of the flyer yields the same conclusion. Review of the National Association of Realtors' flyer suggests that it was a public communication made within 120 days of the 2004 general election, and paid for by an association, not a separate segregated fund or non-connected (political) committee. The only way that the Realtors' payment for such a communication can "exceed limits [or, more accurately, trigger prohibitions against corporate contributions] established by Campaign Finance Law," *see* Complaint, is if the payments were made in cooperation, consultation or concert with, or at the request

¹ The complainant also asserts that "while [he has] no way to determine how much it cost to produce [the flyers, he has] no doubt that it exceeds limits established by Campaign Finance Law."

or suggestion of, the Committee or its agents. See 2 U.S.C. § 441a(a)(7)(B)(i); 11 CFR Part 109. But this did not occur.

Mr. Dean Myers, campaign manager to the Committee in the 2004 election cycle, has stated that neither he, nor any agent of the Committee, consulted with the Realtors or their agents in the development of the Realtors' communications. Affidavit of Dean Myers, ¶¶ 1 and 3, attached. Mr. Myers also stated that there was no communication by the Realtors made in cooperation or consultation with the Committee or its agents, and there was never any request or suggestion that the Realtors make any such communications. Affidavit of Dean Myers, ¶¶ 4 and 5, attached. As such, the Committee has not violated even the most generous reading of the complaint. The Commission has no basis to believe a violation has been committed by the Committee. The only actions proper to the Commission under 2 U.S.C. § 437g(a) are to find no reason to believe a violation exists, and take no further action against the Committee.

Respectfully submitted,



Timothy W. Gupton
Treasurer, The Richard Burr Committee
P.O. Box 5928
Winston-Salem, North Carolina 27113-5928

State of North Carolina

County of Forsyth

)
) Affidavit of Dean Myers
)

AFFIDAVIT OF DEAN MYERS, individually and on behalf of The Richard Burr Committee ("Committee"), first being duly sworn, deposes and says:

1. I am Dean Myers. I was Campaign Manager for the Committee, the principal campaign committee of Senator-elect Richard Burr during the 2003-2004 election cycle.

2. After receiving a complaint against the Committee filed with the Federal Election Commission, I understand that the National Association of Realtors ("NAR") paid for and distributed print mailers that advocated the election of Richard Burr to the U.S. Senate.

3. Upon information and belief, I hereby state that neither I, nor any agent of the Committee, consulted with NAR or its agents in developing NAR's communications, whether by print, radio or television, including the printed communication at issue.

4. Furthermore, I state that I did not have substantial discussions with any employee of NAR throughout the election cycle, nor have consulted with NAR or provided any material information about the Committee's plans, projects or needs to NAR.

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5. No communication was made by NAR in cooperation or in consultation with the Committee, or its agents, and there was never any request or suggestion to do so.

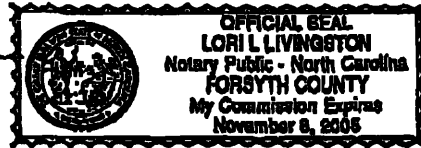
The above is true and correct to the best of my knowledge.

Dean Myers
Dean Myers

Signed and sworn to before me on this 15th day of November, 2004.

Lori L. Livingston
Notary Public

My Commission Expires:



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